

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 STEVEN VANCE, et al.,

11 Plaintiffs,

12 v.

13 MICROSOFT CORPORATION,

14 Defendant.

CASE NO. C20-1082JLR

ORDER ON MOTION TO SEAL

15 Before the court is Defendant Microsoft Corporation's ("Microsoft") motion to
16 seal. (Mot. (Dkt. # 82).) Specifically, Microsoft moves to seal two documents it filed in
17 support of its opposition to Plaintiffs' motion for class certification: (1) an excerpt of
18 Interested Party International Business Machines Corp.'s ("IBM") Diversity in Faces
19 Dataset ("DiF") attached as Exhibit 6 to the declaration of Xiang Li (Li Decl. (Dkt.
20 # 80) ¶ 7, Ex. 6 (Dkt. # 83-1) (sealed)); and (2) the declaration of Peggy Daley (Daley
21 Decl. ((Dkt. # 81) (redacted) & (Dkt. # 83) (sealed))). IBM responded to Microsoft's
22 motion. (Resp. (Dkt. # 99).) Having considered the motion, IBM's response thereto,

1 the balance of the record, and the applicable law, the court GRANTS IN PART
2 Microsoft's motion to seal.

3 When deciding a motion to seal, courts "start with a strong presumption in favor
4 of access to court records." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135
5 (9th Cir. 2003) (citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). This
6 presumption, however, "is not absolute and can be overridden given sufficiently
7 compelling reasons for doing so." *Id.* (citing *San Jose Mercury News, Inc. v. U.S. Dist.*
8 *Ct. N. Dist. (San Jose)*, 187 F.3d 1096, 1102 (9th Cir. 1999)). Because the sealed
9 documents at issue here are attached to a motion that is "more than tangentially related to
10 the merits of [this] case," the court applies the compelling reasons standard to determine
11 whether sealing is appropriate. *See Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092,
12 1098-102 (9th Cir. 2016). Under this standard, the party seeking to seal a judicial record
13 bears the burden of showing that "compelling reasons supported by specific factual
14 findings . . . outweigh the general history of access and the public policies favoring
15 disclosure." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir.
16 2006).

17 First, Microsoft states that Exhibit 6 to Ms. Li's declaration may contain (1)
18 biometric information about Illinois residents that would, if Plaintiffs' theory of the case
19 is correct, violate Illinois law and (2) URLs to and metadata of Flickr images depicting
20 children. (*See Mot. at 2.*) The court agrees with Microsoft that there are compelling
21 privacy reasons to maintain under seal the alleged biometric data in the DiF dataset and
22

1 information relating to images of children. (*See id.*) Accordingly, the court GRANTS
2 Microsoft's motion to seal Exhibit 6 to Ms. Li's declaration.

3 Second, although Microsoft moved to seal all of the substantive portions of Ms.
4 Daley's declaration based on its understanding that IBM considered the declaration
5 confidential (*see* Mot. at 3; *see also* Daley Decl. (Dkt. # 81) (redacted)), IBM argues
6 only that the court should maintain under seal the images of unidentified non-party
7 individuals that are associated with URLs in the DiF dataset and that are displayed in the
8 declaration (Resp. at 2-3 (citing Daley Decl. at 9, 12, 13, 15, 21, 23 & 29)). IBM asserts
9 that these unidentified non-party individuals have a privacy interest in their likenesses
10 and that it is not possible to ask these unidentified individuals whether they consent to
11 have their images filed on the public docket. (*Id.*) IBM does not present any argument
12 regarding the substantive portions of the declaration. (*See generally id.*) The court
13 agrees that the privacy interests of the unidentified non-parties is a compelling reason to
14 maintain these images under seal. Accordingly, the court GRANTS IN PART
15 Microsoft's motion to seal Ms. Daley's declaration. The court ORDERS Microsoft to
16 redact from Ms. Daley's declaration only the images on pages 9, 12, 13, 15, 21, 23, and
17 29 in accordance with this order and file the redacted declaration on the court's docket
18 within seven (7) days of the filing date of this order.

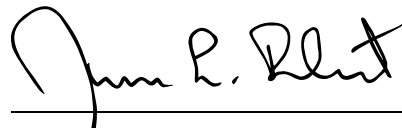
19 //

20 //

21 //

22 //

1 Dated this 10th day of January, 2022.

2
3 

4 JAMES L. ROBART
5 United States District Judge
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22